

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purpose of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Any notes that you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

Some of you may have heard the phrases “direct” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non-existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law, we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.



You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about; the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

It is proper for an attorney to interview any witness for the purpose of learning what testimony the witness will give.

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

In this case, the Purtells claim that Bruce Mason violated their right to freedom of speech guaranteed them by the First Amendment to the United States Constitution. To succeed on this claim, the Purtells must prove each of the following essential elements by a preponderance of the evidence:

1. Bruce Mason, by his conduct or statements or both, discouraged the continued display of the statements on the “tombstones”; and

2. The statements on one or more or all of the “tombstones” were speech protected by the First Amendment to the United States Constitution.

If you find that the Purtells have proved each of these essential elements by a preponderance of the evidence, then you should find for the Purtells, and go on to consider the question of damages.

If, on the other hand, you find that the Purtells have failed to prove any one of these essential elements by a preponderance of the evidence, then you should find for Bruce Mason, and you will not consider the question of damages.

Let me explain what speech is protected by the First Amendment to the United States Constitution. Insofar as this case is concerned, any and all speech is protected by the First Amendment to the United States Constitution except what is referred to in law as “fighting words.” In law, “fighting words” are abusive words or phrases (1) directed at the person of the addressee, (2) which by their very utterance inflict injury or tend to incite an immediate breach of the peace, that is, words that are likely to provoke a violent reaction, and (3) play no role in the expression of ideas.



You must give separate consideration to each party in this case. Although there are two plaintiffs, it does not follow that if one is successful, the other plaintiff is, too.

If you find that either Jeffrey Purtell or Vicki Purtell has proved his or her claim against Bruce Mason, then you must determine what amount of damages, if any, that Plaintiff is entitled to recover.

If you find that either Jeffrey Purtell or Vicki Purtell has failed to prove his or her claim, then you will not consider the question of damages at to that Plaintiff.

If you find in favor of Jeffrey Purtell or Vicki Purtell, then you must determine the amount of money that will fairly compensate him or her for any injury that you find he or she sustained as a direct result of the violation of their right to freedom of speech. These are called “compensatory damages”.

Plaintiffs must prove their damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

The mental and emotional pain and suffering that the Purtells have experienced. No evidence of the dollar value of mental or emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the Purtells for the injury they have sustained.

If you find for either Jeffrey or Vicki Purtell, you may, but are not required to, assess punitive damages against Bruce Mason. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Bruce Mason and others not to engage in similar conduct in the future.

The Purtells must prove by a preponderance of the evidence that punitive damages should be assessed against Bruce Mason. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of the Purtells' rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring the Purtells. Conduct is in reckless disregard of the Purtells' rights if, under the circumstances, it reflects complete indifference to the Purtells' safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Bruce Mason's conduct;
- the impact of Bruce Mason's conduct on the Purtells;
- the relationship between the Purtells and Bruce Mason;
- the likelihood that Bruce Mason would repeat the conduct if an award of punitive damages is not made;
- Bruce Mason's financial condition; and
- the relationship of any award of punitive damages to the amount of actual harm the Purtells suffered.

If you assess punitive damages against Bruce Mason, the punitive damages award will be paid from the personal assets of Bruce Mason, and not from the funds of the Village of Bloomingdale. If you award compensatory damages to Jeffrey Purtell or Vicki Purtell or both of them, the compensatory damages will be paid by the Village of Bloomingdale.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in Court.

A form of verdict has been prepared for you.

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

You are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has a chance to say what they want to say.

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that separate tasks (such as any note taking, time keeping, and recording votes, be assigned to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to different conclusions on facts from any of your fellow jurors. Thinking about the other juror's point of view may help you understand their position better or give you a better way to explain why you think your position is correct.



I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

You may, if you find it necessary during your deliberation, submit written questions to me about the case, but you should understand that you, as the jury, must decide the facts. You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions or your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

